

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On February 11, 1994 appellant, then a 46-year-old information receptionist, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her employment. OWCP accepted the claim for major depression, recurrent episode, severe, without mention of psychotic behavior. It paid appellant compensation on the supplemental rolls, effective December 14, 1997, and on the periodic rolls, effective October 28, 2007.<sup>2</sup>

On April 16, 2020 OWCP contacted SSA to obtain information as to whether an offset of SSA age-related retirement benefits and FECA wage-loss compensation was required.

On July 31, 2020 OWCP received from SSA a March 6, 2020 completed Federal Employees Retirement System (FERS)/SSA dual benefits form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since February 2014. The form showed appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning February 2014, the SSA rate with FERS was \$794.00 and without FERS was \$538.60; beginning December 2014 through November 2016, the SSA rate with FERS was 807.00 and without FERS was \$547.00; beginning December 2016, the SSA rate with FERS was \$809.00 and without FERS was \$549.00; beginning December 2017, the SSA rate with FERS was \$826.00 and without FERS was \$560.00; beginning December 2018, the SSA rate with FERS was \$849.00 and without FERS was \$575.00; and beginning December 2019, the SSA rate with FERS was \$862.00 and without FERS was \$585.00.

OWCP completed a FERS offset overpayment calculation worksheet, determined the 28-day FERS offset amount for the days in each period, and computed a total overpayment amount of \$20,808.44. The offset overpayment calculation worksheet indicated that from February 1 through November 30, 2014, appellant received an overpayment in the amount of \$2,551.19; from December 1, 2014 through November 30, 2016, she received an overpayment in the amount of \$6,265.71; from December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$3,128.57; from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$3,200.77; from December 1, 2018 through November 30, 2019, she received an overpayment in the amount of \$3,297.03; and from December 1, 2019 through August 15, 2020, she received an overpayment in the amount of \$2,365.15.

On September 1, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$20,808.44 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period February 1, 2014 through August 15, 2020, to offset her SSA age-related retirement benefits that were attributable to federal service. It explained that it had reduced her ongoing OWCP benefits for the periodic roll cycle, effective August 16, 2020. Therefore, OWCP determined that an overpayment occurred for the period from February 1, 2014 through August 15, 2020. It found that appellant was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment

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<sup>2</sup> A July 22, 1997 notification of personnel action, Standard Form (SF) 50-B, noted appellant's retirement system as FERS.

method and advised appellant that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On September 18, 2020 OWCP received an overpayment action request and a completed Form OWCP-20 from appellant. Appellant requested waiver of the overpayment as she was without fault in the creation of the overpayment. She listed monthly income including SSA benefits of \$2,406.00 and FECA benefits of \$625.83. Appellant listed monthly expenses including \$820.99 in rent, \$607.00 for food, \$50.00 for clothing, \$370.59 in utilities, \$1,209.81 for other expenses, and \$248.73 monthly payment for a loan, with total monthly expenses of \$3,307.00. She noted total assets of \$6,076.39.

By decision dated June 21, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$20,808.44 for the period February 1, 2014 through August 15, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. OWCP noted that, as of the date of the decision, no response had been received to the preliminary overpayment determination and that appellant had not requested waiver of recovery of the overpayment. It required recovery of the overpayment by submission of payment in full by personal check or money order.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.<sup>3</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>5</sup> FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *see C.H.*, Docket No. 20-1456 (issued November 23, 2021); *see P.B.*, Docket No. 20-0862 (issued November 25, 2020); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and SSA age-related retirement benefits concurrently is a prohibited dual benefit.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$20,808.44 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period February 1, 2014 through August 15, 2020, without an appropriate offset.<sup>7</sup>

The evidence of record indicates that, while appellant was receiving wage-loss compensation under FECA, she also was receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both wage-loss compensation under FECA and SSA age-related retirement benefits attributable to federal service for the same period without an appropriate offset.<sup>8</sup> The information provided by SSA established that, during the period from February 1, 2014 through August 15, 2020, appellant concurrently received SSA age-related retirement benefits that were attributable to her federal service and FECA wage-loss compensation benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods from February 1, 2014 through August 15, 2020. OWCP provided its calculations for each relevant period based on the SSA worksheet which showed that appellant received an overpayment in the amount of \$20,808.44. The Board thus finds that appellant received prohibited dual benefits for the period February 1, 2014 through August 15, 2020, totaling \$20,808.44.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>9</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the

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<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>8</sup> 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 5; *L.J.*, *supra* note 5.

<sup>9</sup> 5 U.S.C. § 8129(a)-(b).

overpayment, OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>10</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.<sup>11</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>12</sup>

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>13</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that this case is not in posture for decision regarding waiver of recovery of the overpayment.

In its June 21, 2021 decision, OWCP found that appellant had failed to respond to the preliminary overpayment determination and had not requested waiver of recovery of the overpayment of compensation. However, on September 18, 2020 it had received from appellant a completed overpayment action request form wherein she requested a decision based on the written evidence and waiver of recovery of the overpayment. Appellant also completed the Form OWCP-20 indicating monthly income, monthly expenses, and assets.

It is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject

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<sup>10</sup> *L.S.*, 59 ECAB 350 (2008).

<sup>11</sup> 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>12</sup> Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4a(3) (September 2020).

<sup>13</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>14</sup> FECA Procedure Manual, *supra* note 11 at Chapter 6.400.4c(3) (September 2020).

matter appealed,<sup>15</sup> it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>16</sup>

In the present case, OWCP's June 21, 2021 decision did not review and address relevant evidence received prior to the issuance of its decision. The case must, therefore, be remanded so that OWCP may fully consider the evidence that was properly submitted by appellant prior to the issuance of the decision. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that OWCP properly found an overpayment of compensation in the amount of a \$20,808.44 for the period February 1, 2014 through August 15, 2020 for which she was without fault because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that this case is not in posture for decision regarding whether OWCP properly denied waiver of recovery of the overpayment.

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<sup>15</sup> 20 C.F.R. § 501.6(c).

<sup>16</sup> *William A. Couch*, 41 ECAB 548,553 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 4, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board